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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,702	12/21/2000	Nabil Enrique Salman	8384P	9701

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EXAMINER

TRUONG, THANH K

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 08/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/745,702	SALMAN ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
Thanh K Truong	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 June 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3 and 5-20 is/are pending in the application.

4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,3 and 5-10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 23 June 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892) ~~~~~

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to applicant's amendment, Paper No. 9, received on June 23, 2003.
2. Applicant's cancellation of claims 2, 4 and 11 in Paper No. 9 is acknowledged.

#### ***Specification***

3. The amendment filed June 23, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: page 9, line 25 – page 11, line 19. The added material introduce new definition and new details that were not part of the original disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

#### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1, 3, 5-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5-8, 11, 14, 15 and 18 of copending Application No. 10/010,391. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to omit the specific elements from the copending Application claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1, 3 and 8 rejected under 35 U.S.C. 102(e) as being anticipated by Lecomte (6,065,272).

Lecomte discloses (figure 1) a portable packaging device comprising:

a body "X" ("X", "Y", "A", "B", "C", "I", "O", "P" and "W" are marked by the examiner) formed by an inner core having an inlet opening "I" and an outlet "O" opening, and a passageway there between for passing there through an article to be packaged;

a casing "Y" comprising a surrounding casing wall, and a base wall "B" that joins an end of the surrounding casing wall to the body, the body and the casing defining a storage space "C" and a dispensing opening at the inlet end, wherein the device can retain a length 3 of the flexible tubular sheet within the storage space, wherein the tubular sheet are dispensed through the dispensing opening and into the inlet opening of the inner core, the article to be packaged are inserted through the inlet opening and inside the tubular sheet and the tubular sheet are gathered and closed at each end to form a closed packaged article "P", and

a means 5 for separating the closed packaged article from a trailing portion of the tubular sheet, to remove the closed individually packaged article through the outlet opening (column 5, lines 20-24). Furthermore, Lecomte disclosure (column 3, lines 63-67) implies that the separating means comprises a cutting blade that capable of cutting through a trailing portion of the tubular film. Moreover, combination of a sealing and a cutting blade for sealing and cutting tubular bag is well known practice in the art.

Lecomte further discloses a cutting means 5 positioned adjacent the outlet opening "O" of the inner core (figure 1), and a cap "A" covering at least a portion of the dispensing opening for retaining the length of non-resilient flexible tubular sheet.

8. Claims 9 & 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lecomte (6,065,272).

As discussed above in the paragraph 7 of this office action, Lecomte discloses the claimed invention, except for the handle and the shape of the outlet opening and a portion of the passageway are oval.

It would have been an obvious matter of design choice to add a handle to the portable packaging device and to make the outlet opening and a portion of the passageway in an oval shape.

Since Applicant's disclosure admitted that the handle is an optional feature of the claimed invention (page 15, lines 9-10), therefore, the apparatus of the present invention would perform equally well without the handle.

Similarly, Applicant submitted that the shape of either or both the inlet and outlet opening can be circular, or oval (page 4, lines 14-16), therefore, the apparatus of the present invention would perform equally well with the outlet opening of a circular shape.

For the reasons mentioned above, the handle and the oval shape outlet opening would have been an obvious variation of the present invention.

#### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lecomte (6,065,272) in view of Hamilton et al. (5,662,758).

As discussed above in paragraph 7 of this office action, Lecomte discloses the claimed invention, except that the tubular sheet comprises the adhesive material.

Hamilton discloses a flexible film having pressure sensitive adhesive protected from inadvertent adherence (abstract); the flexible film having a recessed pressure sensitive adhesive and collapsible protrusions (three-dimensional film) which serve as stand-off to prevent premature sticking to wide variety of rigid and resilient target surfaces, wherein the collapsible protrusions are small and closely spaced for releasable sealing of the composite material to such surfaces or even to itself (column 3, lines 20-26).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Lecomte apparatus by applying the flexible film with adhesive as taught by Hamilton providing a flexible material having pressure sensitive adhesive that is protected from inadvertent adherence to other surfaces.

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11. Claims 1, 3 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Couper (3,536,192) in view of Shiotari (5,890,351).

Couper discloses (figures 1-3) an apparatus comprising: a body formed by casing walls 12 and 20 having an inlet and an outlet opening and a passageway there between; the casing define a storage space wherein the tubular sheet 40 is dispensed through the dispensing opening and into the inlet opening (figure 2); cap 26 covering at

least a portion of the dispensing opening; and the tubular sheet is gathered and closed at each end to form a closed packaged article (figure 1).

Couper discloses the claimed invention, except for a cutting blade position adjacent the outlet opening for cutting through a trailing portion of the tubular film to form a closed individually package article.

Shiotari discloses a means for separating tubular sheet comprises a cutting blade 20 for cutting a flexible tubular plastic material at selected lengths for forming disposable bag (column 1, lines 9-11).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Couper apparatus by incorporating the cutting means as taught by Shiotari and position the cutter blade adjacent the outlet opening of the Couper's device providing a cutting tool that severed the tubular sheet at various lengths to form different sized disposable bags.

Regarding to claims 9 and 10, Couper discloses the claimed invention, except for the handle and the shape of the outlet opening and a portion of the passageway are oval.

It would have been an obvious matter of design choice to add a handle to the portable packaging device and to make the outlet opening and a portion of the passageway in an oval shape.

Since Applicant's disclosure admitted that the handle is an optional feature of the claimed invention (page 15, lines 9-10), therefore, the apparatus of the present invention would perform equally well without the handle.

Similarly, Applicant submitted that the shape of either or both the inlet and outlet opening can be circular, or oval (page 4, lines 14-16), therefore, the apparatus of the present invention would perform equally well with the outlet opening of a circular shape.

For the reasons mentioned above, the handle and the oval shape outlet opening would have been an obvious variation of the present invention.

12. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Couper (3,536,192) in view of Shiotari (5,890,351) and further in view of Hamilton et al. (5,662,758).

As discussed above in paragraph 11 of this office action, the modified Couper discloses the claimed invention, except that the tubular sheet comprises the adhesive material.

Hamilton discloses a flexible film having pressure sensitive adhesive protected from inadvertent adherence (abstract); the flexible film having a recessed pressure sensitive adhesive and collapsible protrusions (three-dimensional film) which serve as stand-off to prevent premature sticking to wide variety of rigid and resilient target surfaces, wherein the collapsible protrusions are small and closely spaced for releasable sealing of the composite material to such surfaces or even to itself (column 3, lines 20-26).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Couper apparatus by applying the flexible film with adhesive as taught by Hamilton providing a flexible material having

pressure sensitive adhesive that is protected from inadvertent adherence to other surfaces.

***Response to Arguments***

13. Applicant's arguments filed June 23, 2003 have been fully considered but they are not persuasive.

In response to the Applicant's argument that the "cutting blade" is missing from Lecomte, the examiner disagrees. Lecomte implicitly discloses that the sealing means comprises the means for separating the tubular sheet; furthermore, column 3, lines 63-67, the jaws of the sealing means comprises an "excrescence", that is capable of cutting, can be construed as a cutting blade.

Applicant's arguments with respect to claims 5-7 have been considered but are moot in view of the new ground(s) of rejection.

Regarding to claims 9 and 10, Applicant's attention is directed to paragraph 8 of this Office Action; the examiner had clarified the rejection of claims 9 and 10 base on Lecomte and the Applicant's disclosure.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700

tkt  
July 29, 2003